SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 82

BS172934 November 21, 2019
ADRIAN RISKIN VS LARCHMONT VILLAGE PROPERTY OWNERS ASSOCIATI 1:30 PM

Judge: Honorable Daniel S. Murphy
Judicial Assistant: N DiGiambattista
Courtroom Assistant: B Hall

CSR: D Van Dyke/CSR 10795
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Petitioner(s): Abenicio J. Cisneros (x)

For Respondent(s): Larchmont Village Property Owners Asociat BY: J. Thomas Cairns (x)

NATURE OF PROCEEDINGS: MOTION OF PETITIONER, ADRIAN RISKIN, FOR ATTORNEY'S FEES

Matter comes on for hearing and is argued.

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Counsel for respondent's oral request for a continuance is made and denied.

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The court takes the matter under submission.

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LATER: The court rules as follows:

Petitioner Adrian Riskin ("Petitioner") moves for an award of attorney's fees and costs in the amount of $73,599.63 against Respondent Larchmont Village Property Owners Association ("Respondent") pursuant to Government Code section 6259(d).

Background and Procedural History 1

Respondent is a property owners' association pursuant to the Property and Business Improvement District Law of 1994, California Streets & Highway Code §§ 36600, et seq. Respondent contracts with the City of Los Angeles and other entities to manage the Larchmont Village Business Improvement District ("the BID"). Respondent is subject to the CPRA both as a matter of state law and under the terms of its contract with the City of Los Angeles. (Pet. ¶ 6; RJN Exh. A; Streets & Highways Code § 36612.)

Petitioner's CPRA requests
This writ action concerns three CPRA requests Petitioner submitted to Respondent in April and May 2017. (Riskin Decl. ¶ 2.)

Request 1

The April 16, 2017, request ("Request 1") sought three categories of records: (1) emails between anyone at the BID and anyone at the domains "lacity.org" or "lapd.online" from between January 1, 2016, and March 31, 2017; (2) copies of the minutes of BID board meetings which took place on October 13, 2014, October 15, 2015, and October 12, 2016; and (3) contracts between the BID and any consultants it used during its most recent renewal process. (Riskin Decl. Exh. A.)

After Respondent failed to respond within 10 days as directed by Cal. Gov. Code section 6253(c), Petitioner sent a follow-up email on May 2, 2017. (Riskin Decl. ¶ 3, Exh. B.) Petitioner sent a second follow-up email on May 11, 2017. (Ibid.) On February 17, 2018, having received no response for 10 months, Petitioner sent a final follow-up message. (Ibid.) Respondent did not respond prior to the filing of the writ petition. (Riskin Decl. ¶ 4.)

Request 2

The April 17, 2017, request ("Request 2") sought two categories of records: (1) agendas for all BID board meetings from January 1, 2014, through "the present"; and (2) all emails between anyone at the BID–staff or board member–from October 2016 that relate to the October 2016 board meeting and, if those emails were very few, all emails related to the operation of the BID from October 2016. (Riskin Decl. Ex. A.)

After Respondent failed to respond within 10 days, Petitioner sent a follow-up email on April 28, 2017. (Riskin Decl. ¶ 3, Exh. B; Pet. ¶ 23, Exh. G.) After receiving no response, Petitioner sent a second follow-up email on May 11, 2017. (Riskin Decl. Exh. B.) Respondent responded on May 16, 2017, but failed to provide records, confirm the existence of records, or provide a determination of disclosability. Rather, Respondent stated that it was reviewing the request and expected to respond further within 14 days. (Riskin Decl. ¶ 4, Exh. C.) Respondent did not respond further within 14 days. (Ibid.) Hearing nothing from Respondent regarding the request, Petitioner sent a final follow-up email regarding Request 2 on February 17, 2018. (Riskin Decl. ¶ 3, Exh. B.) Respondent did not respond. (Riskin Decl. ¶ 4.)

Request 3

The May 2, 2017, request sought a single category of records: electronic copies of all material distributed at the BID's May 2, 2017, board meeting. (Riskin Decl. ¶ 2, Exh. A.) After Respondent failed to respond within 10 days, Petitioner sent a follow-up email on May 30, 2017.

(Riskin Decl. ¶ 3, Exh. B.) In addition to inquiring as to the status of Request 3, Petitioner informed Respondent of its duties under the Brown Act and offered to inspect the records in person upon request. (Ibid.) Respondent did not respond. (Riskin Decl. ¶ 4.) Petitioner sent a final follow-up email on February 17, 2018. (Riskin Decl. ¶ 3, Exh. B.) Respondent did not respond prior to Petitioner filing the petition on March 20, 2018. (Riskin Decl. ¶ 4.)

Petitioner Files Petition; No Answer Filed

On March 20, 2018, Petitioner filed his verified petition for writ of mandate. On April 26, 2018, Petitioner filed proof of service of the verified petition on Respondent by personal service on April 3, 2018.

A trial setting conference was held July 10, 2018, and was attended by counsel for Petitioner and Respondent. The court set the petition for hearing on May 16, 2019 and set a briefing schedule.

Respondent did not file an answer, or any other response, to the petition.

Respondent Produces Some Responsive Records

Respondent produced a portion of the responsive records via emails sent by the Respondent's attorney on September 14, 2018, ("Batch 1") and November 5, 2018 ("Batch 2"). (Cisneros Decl. ¶¶ 2, 3.) The responsive records included several emails responsive to Request 1.1, a contract responsive to Request 1.3, and three meeting agendas responsive to Request 2.1. (Riskin Decl. ¶¶ 6, 7.) However, the production contained many nonresponsive records. (Cisneros Decl. ¶¶ 2, 3.) Further, Petitioner contends that no records were provided in response to Requests 1.2, 2.2, or 3.1. (Cisneros Decl. ¶¶ 7, 8, 9.)

Briefing and Court's Decision

On March 14, 2019, Petitioner filed his opening brief in support of the writ petition and supporting declarations. On April 18, 2019, Petitioner filed proof of service of the opening brief, showing personal service on Respondent on March 15, 2019. No opposition brief to the writ petition was filed.

The court held a hearing on the writ on May 16, 2019. Respondent's counsel contended that Respondent did not file an answer or any opposition to the petition because Respondent had not been properly served. Respondent's counsel asserted that he had made a "special appearance" at

the July 10, 2018 trial setting conference and had informed the court Respondent had not been properly served. The court continued the hearing until June 4, 2019 so that the transcript of the July 10, 2018 hearing could be obtained.

On June 4, 2019, the court found that Respondent made a general appearance at the trial setting conference. (See Mansour v. Superior Court (1995) 38 Cal.App.4th 1750, 1756.) The court granted the petition as to Requests 1.1, 1.2, 2.1, 2.2, and 3.1 and found Petitioner was the prevailing party and entitled to CPRA fees.

On June 17, 2019, the court entered an order granting the writ petition. The court ordered Respondent to conduct an additional search for, and to produce non-exempt records in response to Requests 1.1, 1.2, 2.1, 2.2, and 3.1.

On September 16, 2019, Petitioner filed his motion for attorney's fees. The court has received Respondent's opposition 2 and Petitioner's reply.

On October 15, 2019, the court denied Petitioner's ex parte application for an OSC re: contempt. The court did not find a willful violation of the June 17, 2019 order. However, the court ordered Respondent to file a declaration of Aaron Dolan by November 12, 2019, regarding his search for documents identified in the court's order.

Analysis

In a CPRA action, "the court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section." 3 (Gov. Code § 6259(d).) Under the CPRA, an award of attorney's fees to a prevailing plaintiff is mandatory. (Fontana Police Dept. v. Villegas-Banuelos (1999) 74 Cal.App.4th 1249, 1252.)

Prevailing Party

"A plaintiff prevails within the meaning of the [CPRA] 'when he or she files an action which results in defendant releasing a copy of a previously withheld document.'" (Los Angeles Times v. Alameda Corridor Transp. Authority (2001) 88 Cal.App.4th 1381, 1391.) "A plaintiff is considered the prevailing party if his lawsuit motivated defendants to provide the primary relief sought or activated them to modify their behavior, or if the litigation substantially contributed to or was demonstrably influential in setting in motion the process which eventually achieved the desired result." (See Belth v. Garamendi (1991) 232 Cal.App.3d 896, 901.) "If a plaintiff

succeeds in obtaining only partial relief, the plaintiff is entitled to attorney fees unless the plaintiff obtains results 'that are so minimal or insignificant as to justify a finding that the plaintiff did not [in fact] prevail.'" (Sukumar v. City of San Diego (2017) 14 Cal.App.5th 451, 464.)

As the court concluded in its June 4, 2019 order, Petitioner is the prevailing party. He filed an action resulting in Respondent releasing public records that were previously withheld. Further, the court granted the writ petition as to several requests and ordered Respondent to conduct an additional search and produce responsive records. Under section 6259(d), an award of reasonable fees and costs to Petitioner is mandatory.

Respondent's Contentions Not Persuasive

Respondent did not file an answer and did not oppose the writ petition. Nonetheless, Respondent has now filed an opposition brief to the fees motion and argues that the litigation was unnecessary and brought in bad faith.

Respondent argues that the writ petition was unnecessary because Petitioner went on "radio silence" for months prior to the litigation and did not attempt to resolve the dispute prior to litigation. (Oppo. 6-8.) This argument is incorrect both legally and factually. Petitioner does not seek fees under CCP section 1021.5, but rather under the CPRA. As stated, under the CPRA, an award of attorney's fees to a prevailing plaintiff is mandatory. (Gov. Code § 6259; Fontana Police Dept. v. Villegas-Banuelos (1999) 74 Cal.App.4th 1249, 1252.) Respondent cites no authority for the proposition that a CPRA petitioner cannot recover fees if he or she failed to make attempts to settle the dispute prior to litigation. (See Oppo. 6-7; cf. Graham v. DaimlerChrysler Corp. (2004) 34 Cal.4th 553, 577 [discussing fees under CCP § 1021.5 and catalyst theory, not CPRA].) Moreover, in this case, Petitioner did not prevail solely as a catalyst. Petitioner also obtained a court order granting the petition in part.

Factually, Respondent's argument also fails because Petitioner sent several follow-up communications to Respondent regarding the CPRA requests at issue in April and May 2017. (See Reply 4; see Riskin Merits Decl. Exh. A-B.) Respondent's attorney, Thomas Cairns, responded on May 16, 2017 that Respondent "is currently reviewing your request and its records." (Riskins Merits Decl. Exh. B.) Petitioner also contacted Respondent about the requests on February 17, 2018 and March 12, 2018, before filing the writ petition. (Ibid.; Cairns Decl. Exh. 8.) Respondent's argument that Petitioner did not attempt to resolve the CPRA dispute prior to litigation lacks merit.

Respondent argues that Petitioner has brought this and other CPRA writ petitions in order to "destroy" business improvement districts ("BIDs"). Respondent points out that its annual budget is approximately $140,000, and that it does not have full or part-time staff to handle CPRA requests. (Oppo. 2-3, 7-8.) Respondent contends that Petitioner's counsel made an "extortionate" demand for $17,000 in fees at the start of the litigation. (Oppo. 5.) The court considers below the reasonable amount of fees that should be awarded to Petitioner under the specific circumstances of this case. Respondent's contentions are otherwise unpersuasive.

Respondent falsely characterizes Petitioner's blogpost as evidence that Petitioner has a strategy of "issuing frequent, overlapping and confusing CPRA records requests in order to trap BIDs into technical violations of the law and then bankrupt them through litigation." (Oppo. 7 and Exh. 13.) Exhibit 13 does not state or imply such strategy. Furthermore, that Petitioner may be politically opposed to BIDs is irrelevant to the merits of his CPRA petition and his entitlement to fees. (See Gov. Code § 6257.5 ["This chapter does not allow limitations on access to a public record based upon the purpose for which the record is being requested, if the record is otherwise subject to disclosure."].) The court cannot say that Petitioner's counsel's attempts to settle this matter, including as to fees, early in the litigation were unreasonable or improper. (See Cairns Decl. Exh. 9-12.) Indeed, Respondent may have avoided substantial litigation and fees if it had taken those settlement discussions more seriously. Finally, as discussed, Respondent is subject to the CPRA both as a matter of state law and under the terms of its contract with the City of Los Angeles. (Pet. ¶ 6; RJN Exh. A; Streets & Highways Code § 36612.) Respondent cannot avoid its CPRA obligations by claiming to have a limited budget.

Reasonable Amount of Attorney's Fees

"The determination of what constitutes a reasonable fee generally 'begins with the 'lodestar,' i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate….' [T]he lodestar is the basic fee for comparable legal services in the community…." (Graciano v. Robinson Ford Sales, Inc. (2006) 144 Cal.App.4th 140, 154.)

Hourly Rate

Generally, the reasonable hourly rate used for the lodestar calculation is the rate prevailing in the community for similar work. (Center for Biological Diversity v. County of San Bernardino, (2010) 188 Cal.App.4th 603, 616.) In making its calculation, the court may rely on its own knowledge and familiarity with the legal market, as well as the experience, skill, and reputation of the attorney requesting fees, the difficulty or complexity of the litigation to which that skill

was applied, and affidavits from other attorneys regarding prevailing fees in the community and rate determinations in other cases. (569 East County Boulevard LLC v. Backcountry Against the Dump, Inc., (2016) 6 Cal.App.5th 426, 437.)

Petitioner requests hourly rates of $400 for attorneys Abenicio Cisneros and Anna von Herrmann, both of whom are 5-year attorneys with experience in CPRA cases. (See Mot. 5-6; Cisneros Decl. ¶¶ 2-12; Herrmann Decl. ¶¶ 1-4.) The court finds these hourly rates to be reasonable given Cisneros' and Herrmann's legal experience and for a CPRA action in Los Angeles. (See Stiefel Decl. ¶¶ 1-27.) Respondent makes no argument to the contrary.

Amount of Time Spent

"The verified time statements of the attorneys, as officers of the court, are entitled to credence in the absence of a clear indication the records are erroneous." (Horsford v. Board of Trustees of California State University (2005) 132 Cal.App.4th 359, 396.) The court has discretion to reduce fees that result from inefficient or duplicative use of time. (Horsford at 395.)

Petitioner requests 87.6 hours for all legal work prior to the fee motion; 11.75 hours of travel time prior to the fee motion (23.5 hours x 0.5); 11.7 hours on compliance proceedings; 12.7 hours in preparing the fee motion; and 26.3 hours for the reply and fee hearing. (See Cisneros Decl. ¶¶ 13-15, Exh. D-F; Herrmann Decl. ¶ 4; Reply Cisneros Decl. ¶¶ 5-8, Exh. B, C; Reply 10, fn. 2.) In total, Petitioner seeks a total lodestar fee, not including a multiplier, of $60,020.

In the present case, the court finds that the reasonable number of hours spent on this case by Petitioner's counsel is 105 hours. The court finds that some of the hours billed were excessive for attorneys as experienced as Petitioner's counsel. (ie, 12.7 preparing fee motion and 26.7 hours for reply and fee hearing.)

The court finds that Petitioner reasonably incurred $42,000 in fees in this action.

Multiplier

A trial court may adjust the lodestar upward or downward using a multiplier. (Ketchum v. Moses (2001) 24 Cal.4th 1122, 1132.) The factors to consider for a multiplier include: (1) the novelty and difficulty of the questions involved, and the skill displayed in presenting them; (2) the extent to which the nature of the litigation precluded other employment by the attorneys; (3) the

contingent nature of the fee award, both from the point of view of eventual victory on the merits and the point of view of establishing eligibility for an award; (4) the fact that an award against the state would ultimately fall upon the taxpayers; (5) the fact that the attorneys in question received public and charitable funding for the purpose of bringing law suits of the character here involved; (6) the fact that the monies awarded would inure not to the individual benefit of the attorneys involved but the organizations by which they are employed; and (7) the fact that in the court's view the two law firms involved had approximately an equal share in the success of the litigation. (Serrano v. Priest (1977) 20 Cal.3d 25, 48-49.)

Petitioner requests a multiplier of 1.25 on the grounds that (1) Petitioner's counsel took the case on a contingency; (2) counsel was responsible for costs; (3) there is a significant risk of not prevailing in any given CPRA case given that the requestor has incomplete information, including when the agency refuses to respond; and (4) counsel must often wait over a year for any compensation in CPRA cases taken on contingency. (Mot. 6-7; Cisneros Decl. ¶¶ 5-6.)

As Petitioner notes, application of a multiplier may be appropriate in cases where attorneys take a case on a contingency fee basis as a means of compensate them for their risk of loss. (Ketchum v. Moses (2001) 24 Cal.4th 1122, 1133.) This case also involved some time delay in counsel obtaining compensation. However, other factors do not support a multiplier in this case. The first factor ? difficulty of legal issues and skill in their presentation – has been considered in setting the appropriate hourly rate. Furthermore, Petitioner's counsel's time for the second writ hearing and other post-trial proceedings is compensated in the lodestar fee. A fee award in this case may ultimately fall upon taxpayers and could substantially impact Respondent's limited budget. Petitioner's counsel also does not show that this action prevented him from taking other employment. Also, while Petitioner's counsel makes general statements about CPRA cases, he does not show that the legal issues in this case were particularly difficult or that Petitioner's likelihood of prevailing was low or difficult to quantify.

All factors considered, the court exercises its discretion and declines to award a multiplier.

Costs

Petitioner filed a cost memorandum on July 1, 2019 for $1,387.20. Respondent has not filed a motion to strike or tax costs. Petitioner now requests additional costs not included in the cost memorandum in the amounts of $794.84 (Cisneros Decl. ¶ 16) and $337.59 (Reply Cisneros Decl. ¶ 7.) The court must award costs to Petitioner pursuant to Government Code section

6259(d). Respondent does not object to the amount of additional costs requested. The court finds the costs reasonable and allowable.

Conclusion

The motion is GRANTED IN PART. The court awards Petitioner total attorney's fees of $42,000 and costs in the sum of $1,387.20 as set forth in the July 1, 2019, memorandum of costs.

FOOTNOTES:

1- This background section is adopted from the statement of facts for the writ petition included in the court's minute order dated June 4, 2019. In this background section, citations are to the declarations in submitted for the writ petition. In the Analysis section below, the court cites to the declarations submitted for and against the fee motion.
2- Respondent did not lodge a courtesy copy of the opposition brief as required by the court's General Order re Mandatory Electronic Filing for Civil, section d). Respondent's counsel is admonished to comply with this court order.
3- Section 6259(d) also provides: "If the court finds that the requester's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency." Here, the court granted the petition, and did not find it clearly frivolous. Thus, this part of the fee statute does not apply. (See also Bertoli v. City of Sebastopol (2015) 233 Cal.App.4th 353 [CPRA petition not clearly frivolous; fee award for agency reversed].)

The clerk is instructed to interlineate amount of costs and attorneys' fees awarded this date on the order signed and filed on June 17, 2019.

A copy of this minute order is mailed via U.S. Mail to counsel of record.

Certificate of Mailing is attached.